IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 71 OF 2005

Bharat Petroleum Corporation Ltd. .. Petitioner

versus

Videocon Properties Limited .. Respondents

...

Ms.Sheeja Jhon i/b M.P.Savla & Co. for the petitioner.

Mr.Virendra Tulzapurkar with Ms.Neeta Rajde i/b DSR Associates for the respondents.

CORAM : B.H. MARLAPALLE,J

DATED : 11th October 2005.

P.C.:

1. Heard Ms.Sheeja Jhon, the learned counsel for the petitioner corporation which claims to be occupying an area admeasuring about 865 sq.m. of a larger part admeasuring 6482.70 sq.m. bearing CTS

No. 131, 131/1 to 131/7 of Village Kurla, Kirol, Lal Bahadur Shastri Marg, Kurla as a tenant and successor of a Burmah-Shell. On the said portion, there is a petrol pump running in the name and style of M/s.Sainik Auto. The plot belonged to M/s.Liberty Oil Mills Ltd. and subsequently came to be purchased by the present respondent company some time in the year 1994 from M/s.Ivory Properties and Hotels Pvt.Ltd.

2. As per the applicant, pursuant to the negotiations held between the parties, a proposal for the sale of the suit plot with additional 120.77 sq.m. area was discussed and the respondent agreed to sell the said area. The minutes of meeting were drafted and signed by the representatives of both the parties on 14th March 2001 and by a forwarding letter dated 31st March 2001, a copy of the minutes was sent to the Respondent company. The applicants also agree that the respondent by its letter dated 19th January 2002 informed that they would consider sale of the suit plot and expressed their inability to sell the adjacent plot. The applicant Corporation also admits to have received a letter dated 24th February 2004 calling upon them to vacate the suit property.

Consequently the applicant Corporation has approached this Court and filed Suit no.191 of 2005 for specific performance, whereas the respondent company has filed T.E. & R Suit no. 24/29 of 2005 before the Small Causes Court so as to recover from the applicant company vacant and peaceful possession of the suit premises/plot. The applicant seeks to invoke the provisions of Section 24 of the Code of Civil Procedure for transfer of T.E.& R Suit no.24/29 of 2005 presently pending in the Small Causes Court at Mumbai to this Court in its Ordinary Original Civil Jurisdiction for being heard and disposed of along with the Suit no.191 of 2005.

3. The learned counsel for the applicant relied upon the following decisions.

i) Chittivalasa Jute Mills vs. Jaypee Rewa Cement reported in 2004(3) SCC 85 and

ii) Gupta Cardiac Care Centre & Hospital Vs. Olympic Pharma Care (P) Ltd. reported in 2004(6) SCC 756.

Admittedly, the suit instituted by the respondent is

for eviction for which the competent court is the Small Causes Court, Mumbai. In the letter dated 19th January 2002 addressed by the respondent to the petitioner, it was stated that the respondent was willing to consider the sale of entire land and whether such correspondence including the MOU purportedly signed on 14th March 2001 would amount to an agreement or not would be examined in the pending suit on the Original Side of this Court. The fact remains that the respondent issued a notice on 24thh February 2004 calling upon the applicant to vacate the suit plot and consequently, it has filed the suit before the Small Causes Court which is a special Court under the Maharashtra Rent Control Act 1999. The parties to the suit are also different in as much as in T.E. & R. Suit no.24/29 of 2005 filed by the respondent before the Court of Small Causes at Mumbai, the present applicant and M/s.Sainik Auto Ltd. are impleaded as respondents/opponents whereas in Suit no.191 of 2005, the applicant has impleaded the respondent alone. There is no reason to believe that the cause of action in both the suits is the same and in such circumstances, the apprehension expressed by the applicant that there may be conflict of decrees cannot be a reason to invoke the powers

under section 24 of the Code of Civil Procedure so as to transfer the suit pending before the Court of Small Causes u/s.41 of the Presidential Small Causes Court Act to this Court on its Original Side.

5. Hence, this application must fail at the threshold. The same is hereby rejected summarily.

B.H. MARLAPALLE, J